




**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 10**  
1200 Sixth Avenue  
Seattle, Washington 98101

April 13, 2000

Reply to  
Attn of: ORC-158

**MEMORANDUM**

**SUBJECT:** Quinault Indian Nation, Washington; Eligibility for "Treatment As A State" for a Grant under Section 106 of the Clean Water Act

**FROM:** Mary St. Peter   
Assistant Regional Counsel

**TO:** Diana Boquist  
Tribal Office

This memorandum summarizes my legal analysis for the Office of Regional Counsel of whether the Quinault Indian Nation (QIN or the Tribe) is eligible for a grant under the authority of Section 106 of the Clean Water Act (CWA), 33 U.S.C. § 1256. It is my opinion that the Quinault Indian Nation is eligible for the a grant under Section 106 of the CWA.

On February 2, 2000, the Tribe applied for a TAS determination in order to qualify for grants under the Water Pollution Control and Groundwater Management Program (the Application) pursuant to CWA Section 106. Section 106 provides the authority for EPA to provide funds to an eligible Indian tribe to administer programs for the prevention, reduction and elimination of water pollution, including the development and implementation of ground-water protection strategies. In addition, Section 106(e) of the CWA, and EPA regulations at 40 C.F.R. 35.260(b) state that EPA will not award any Section 106 funds to a tribe that does not have an authority comparable to Section 504 of the CWA. My review also finds that the Tribe has demonstrated that it has a tribal authority comparable to Section 504 of the CWA.

To be eligible for grants under Section 106 of the CWA, the Tribe must meet the criteria of Section 518(e) of the CWA, 33 U.S.C. § 1378(e), as set forth in EPA regulations at 40 C.F.R. § 130.6(d), and meet the requirements of Section 106 (e) of the CWA, by demonstrating that it has the authority comparable to Section 504 of the CWA. This memorandum addresses whether QIN meets the eligibility criteria of Section 518(e) of the CWA and 40 C.F.R. Part 130, as amended, and whether it has demonstrated equivalent emergency powers comparable to CWA Section 504.

## EVALUATION OF REQUIREMENTS FOR ELIGIBILITY OF TRIBES

EPA regulations at 40 CFR Part 130.6(d), which implement Section 518 of the Clean Water Act, provide that an Indian Tribe may be eligible if the Tribe meets the following criteria:

1. Recognition by the Secretary of the Interior. The Quinault Indian Nation, Taholah, Washington, is a federally recognized Indian tribe. See Notice, Bureau of Indian Affairs, 63 Federal Register 71941, December 30, 1998, which lists entities recognized as tribes.
2. Governing body carrying out substantial governmental duties and powers. The Tribe's Application shows that the Quinault Business Committee(QBC)of QIN carries out duties and powers as the governing body of the Tribe. The Application documents that the QIN operates Tribal programs, enacts Tribal laws and ordinances, operates the Quinault Tribal Court system, and provides law enforcement services.
3. The Tribe has demonstrated the legal basis for the QIN's regulatory authority over water resources within the borders of the Quinault Indian Reservation. The Tribe's Application includes a legal analysis by the General Counsel to the QIN that describes the legal basis of the Tribe's authority over the Reservation. That memo, adequately supported by citation to federal laws and cases, concludes that the QIN has the authority to abate and enjoin pollution sources or releases that take place within the boundaries of the Quinault Indian Reservation, including emergency powers comparable to Section 504 of the CWA. Pages 7-10 and Exhibits 3,4,5 and 6 to the Application.
4. The Tribe is reasonably expected to be capable of carrying out the program. Incorporated into this analysis is a memo by Alan Moomaw, of the Tribal Office, dated April 12, 2000, which is attached. After reviewing the QIN Application and citing the Tribal Coordinator Robin Slate's personal experience with QIN staff, he concludes that the QIN has demonstrated the capability to administer and manage an effective water pollution control and groundwater management program.

## CONCLUSION

Based on this analysis that shows the QIN meets the requirements of Sections 518 and 106 of the Clean Water Act, I conclude that the Tribe is eligible for a grant under Section 106 of the CWA.

cc: Alan Moomaw